

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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FULL CIRCLE UNITED, LLC,

Plaintiff,

vs.

BAY TEK ENTERTAINMENT, INC.,

Defendant.

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BAY TEK ENTERTAINMENT, INC.,

Counterclaim Plaintiff,

vs.

FULL CIRCLE UNITED, LLC,

Counterclaim Defendant,

-and-

ERIC PAVONY,

Additional

Counterclaim Defendant.

Case No.  
1:20-cv-03395

DEPOSITION OF LAURA SMITH

(Via Zoom Videoconference)

July 6, 2022

Reported by: John L. Harmonson, RPR

Job No. 211446

1 L. SMITH

2 Q. And to your understanding, what do the  
3 New York courts require to establish lost  
4 profits?

5 MS. REILLY: Objection to form.

6 THE WITNESS: I'm not sure I can  
7 answer that with any degree of certainty. You  
8 know, there are specific issues that I was  
9 looking for related to that, and those were the  
10 focus that I looked at related to New York. And  
11 again, I didn't review any case law, so I would  
12 not feel comfortable trying to summarize what New  
13 York's law requires.

14 BY MR. WILLIAMS:

15 Q. I'm sorry. I don't think that quite  
16 answered the question. I'm not saying you  
17 weren't trying to, but I want to make sure I got  
18 an answer to the question I posed.

19 MR. WILLIAMS: John, could you  
20 possibly read back my last question?

21 (The record was read back by the  
22 reporter as follows:

23 "Question: And to your understanding,  
24 what do the New York courts require to  
25 establish lost profits?" )

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2 MS. REILLY: Just note my objection  
3 again.

4 MR. WILLIAMS: And what was the  
5 objection based upon?

6 MS. REILLY: Well, that's a legal  
7 question that she can't answer.

8 THE WITNESS: My answer is I guess the  
9 same as last time. I don't have anything  
10 additional to add.

11 BY MR. WILLIAMS:

12 Q. Sitting here today, you cannot tell me  
13 what factual factors the New York courts rely  
14 upon to assess the viability of a lost profits  
15 claim. Is that correct?

16 MS. REILLY: Objection to form.

17 THE WITNESS: I don't have any  
18 specific knowledge of what New York is versus  
19 anywhere else. I know what typically is required  
20 to prove out lost profits, but I don't -- I can't  
21 tell you specifically what New York says related  
22 to your question about factual basis. So I don't  
23 know the answer to that question.

24 I know generally what's required. As  
25 I discuss in my report, my analysis meets those

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1

2 requirements.

3 BY MR. WILLIAMS:

4 Q. And where do those requirements come  
5 from again?

6 A. The damages treaties [sic] that I  
7 referenced, my basic knowledge and understanding  
8 of how lost profits work.

9 Q. And I'm sorry. I think you just  
10 misspoke. You said "treaties." But you meant  
11 treatises; is that correct?

12 A. Yes. I'm sorry, I did misspeak. The  
13 books, my damages book.

14 Q. Yeah, no problem. I just wanted the  
15 record to be clear.

16 Aside from those treatises, your  
17 knowledge comes from your basic understanding of  
18 what is required to establish lost profits. Is  
19 that what you're saying?

20 A. I mean, yes. I've been doing this  
21 work for over 20 years. I've worked on many,  
22 many lost profit claims, and many in New York. I  
23 don't believe that there is a large difference  
24 between the federal rules that I'm used to or the  
25 other states. You need to prove reasonable

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certainty to the fact of damages and have a reasonable basis for the calculation of damages.

Q. Okay. For now, I would like to talk about something slightly different. Did you spend any time preparing for this deposition?

A. Yes.

Q. How much time would you estimate you spent?

A. Well, my deposition was moved three times -- or this is the third date for my deposition. So it was moved twice. So I prepped in March, I believe the first one was scheduled. I prepped in May, the beginning of May for the second one. And then I prepped again for this one now. I don't -- I don't have a total hour amount. I prepped at those three different points in time.

Q. Okay. Just for the most recent one, how much time would you estimate you spent preparing?

A. I honestly don't know. Probably somewhere in the range of 20 to 30 hours. I'm not sure.

Q. And did part of that time involve

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2 that's the fact of lost profits but for assuming  
3 liability on whatever count it is, there would --  
4 the fact of damages, in my opinion, is reasonably  
5 certain.

6 Q. And when you say the fact of damages,  
7 in your opinion, is reasonably certain, are you  
8 speaking of the existence of damages generally or  
9 of the specific amount of damages?

10 A. No. I think I mentioned it's just --  
11 the reasonable certainty standard is only applied  
12 to the fact of damages, not the quantification.

13 Q. Do you know how Full Circle calculated  
14 the revenues information that it provided to you?

15 A. My understanding from the document  
16 source that I have and from discussions with Full  
17 Circle is that the revenues, with the exception  
18 maybe of a small period of time in the last year,  
19 were all generated through the app that they have  
20 and the app -- and I think Squarespace maybe, or  
21 Square. I'm sorry, one or the other. And those  
22 documents were provided to me. So I looked at  
23 them. I looked at the returns. And I calculated  
24 what the actual earned revenue was.

25 Q. So you went through all of that data

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2 generated. There is no more need for funding  
3 after that. Right? The lanes that are out there  
4 are generating revenue and they are paying for  
5 the lanes that are then coming in in the next  
6 year or two after that.

7 So there is only a need for funding  
8 really in that first year to cover the losses.  
9 And after that, the revenues are paying for  
10 themselves. Or sorry, the lane revenue is paying  
11 for new lane purchases.

12 Q. Are you aware that Full Circle United  
13 couldn't even keep its own bank account open --

14 MS. REILLY: Objection to form.

15 BY MR. WILLIAMS:

16 Q. -- because it had no money?

17 MS. REILLY: Sorry. Objection to  
18 form.

19 THE WITNESS: I haven't seen any  
20 documents related to that.

21 BY MR. WILLIAMS:

22 Q. Are you aware that at some point Full  
23 Circle United had to start using Eric Cooper's  
24 newly opened apparently personal account as its  
25 corporate account because it didn't have enough

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2 money to run its own business?

3 MS. REILLY: Objection to form.

4 THE WITNESS: Again, I haven't seen

5 any documents related to that.

6 BY MR. WILLIAMS:

7 Q. You've seen what you've been shown by  
8 the other side and what's in Mr. Dragon's report.  
9 Other than that, have you seen anything else?

10 A. Well, I saw all the documents that I  
11 have listed in my report, and I've seen documents  
12 that were provided with Mr. Dragon's -- or  
13 referenced in Mr. Dragon's report.

14 So I asked for a lot of documents. I  
15 received a lot of documents. I considered a lot  
16 of documents. And I asked for requests to be  
17 made of Bay Tek for financial information, and  
18 it's my understanding from counsel that those  
19 requests were made but no documents were ever  
20 produced.

21 Q. Yeah. It sounds like they prepared  
22 you well on that, but they didn't show you some  
23 of the other stuff apparently.

24 MS. REILLY: Objection.

25 MR. WILLIAMS: Objection to what?